IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**CRIMINAL ACTION**
	:	
v.	:	**NO. 18-193-2**
	:	
KRISTIAN JONES	:	
Defendant	:	

ORDER

AND NOW, this 19th day of March 2019, upon consideration of Defendant Kristian Jones' ("Defendant") *motion to suppress*, (Doc. 65), the Government's response in opposition, (Doc. 81), Defendant's reply, (Doc. 114), the evidence and oral argument heard at the motion to suppress hearing that commenced on February 14, 2019, Defendant's post-hearing supplemental memorandum of law, (Doc. 165), the Government's post-hearing brief, (Doc. 166), and the Government's post-hearing response brief, (Doc. 171), it is hereby **ORDERED** that Defendant's *motion to suppress* is **DENIED**.[1]

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[1] In the underlying motion, Defendant moves to suppress all physical evidence obtained during the search of Motel 6 room 614, which included his cellphone and the information contained thereon, on the basis, *inter alia*, that the search, seizure, and arrest were illegal. The Government opposes the motion.

At the evidentiary hearing, the Government presented the testimony of Tinicum Township Police Department ("TTPD") Officer Stephen Lis ("Officer Lis"), and TTPD Sergeant James Simpkins ("Sgt. Simpkins"). Officer Lis testified that on November 15, 2016, he was conducting surveillance in the rear parking lot of the Wyndham Gardens Hotel in Tinicum Township, looking towards the Motel 6. Sometime between 2:00 and 3:00 a.m., he observed a man exit an Acura sedan parked in the parking lot of the Motel 6 and enter a room. He then saw a black male (later identified as Defendant) walk out from the same area of the Motel 6, and cross the parking lot towards the Denny's Restaurant, while looking back over his shoulder at the Acura. The man appeared to make eye contact with Officer Lis. Approximately five to ten minutes later, the first male exited the Motel 6 room, returned to the Acura, and drove away. Officer Lis followed the Acura and pulled over the vehicle for a traffic violation. The man in the Acura identified himself as Henry Nim. Upon questioning, Mr. Nim told Officer Lis that he had solicited prostitution from a woman in room 614 of the Motel 6 after arranging the encounter in response to an advertisement on the website called Backpage. Mr. Nim showed Officer Lis the Backpage advertisement to which he had responded (it showed the body of a light-skinned black woman, but not her face), on his cellphone, as well as a text message telling him to "knock up at room 614." Officer Lis testified that pimps often set up Backpage ads with their cellphones, and then arrange commercial sex dates via text message. Officer Lis found marijuana and an unregistered firearm inside the Acura. He advised Mr. Nim to leave and told him charges would be filed at a later time. Shortly after 3:00 a.m., Officer Lis and TTPD Corporal Alpaugh went to room 614. Officer Lis approached the door and Corporal Alpaugh attempted to look in through the window through shut blinds. Officer Lis smelled the odor of marijuana which had become stronger the

closer he got to the door. Officer Lis knocked on the door approximately five times and repeatedly announced, "This is the police." At some point, Corporal Alpaugh told Officer Lis he saw someone through the blinds approach the door and walk away, and the lights flick off and then back on. Eventually, a light-skinned black female answered the door. Officer Lis described her as having the same build as the woman from the Backpage advertisement. Officer Lis and Corporal Alpaugh entered the room and remained by the door. In the room, there was another light-skinned black female. The two females were later determined to be 15 and 17 years old. As Officer Lis began to speak to the female who opened the door, Defendant emerged from the bathroom, startling the officers. The lights in the bathroom had been off and the door had been closed. Corporal Alpaugh patted down Defendant for protection in search of weapons but felt none. Corporal Alpaugh asked Defendant for identification, which Defendant did not have, and then asked Defendant to empty the contents of his pockets onto the bed, which he did. The pocket contents included a cellphone, a charge card, and a Motel 6 room key card. Officer Lis recognized Defendant as the male he had seen earlier crossing the parking lot, which supported his suspicion that Defendant might be a pimp. Defendant provided the officers with his name and date of birth. Officer Lis left, leaving Corporal Alpaugh in the room. He ran Defendant's name and date of birth through databases, and discovered that Defendant had an outstanding warrant from the state of Maryland. When it was learned that the females were minors, Officer Lis contacted Sgt. Simpkins. It was unclear from Officer Lis' testimony and his cross-examination whether Defendant was placed in custody before or after the outstanding arrest warrant was discovered.

Sgt. Simpkins, who supervises both Officer Lis and Corporal Alpaugh, testified as to his 30 years of law enforcement experience. He further testified that based on the calls from Officer Lis, he believed that the two underage females were being sex trafficked at the Motel 6 and that the officers had detained Defendant. Sgt. Simpkins did not recall when he learned about the outstanding arrest warrant from Maryland. As part of his investigation, he acquired a receipt for room 614, which showed that the room had been registered to Defendant's brother, Anthony Jones, for the period of November 11-14, 2016. Sgt. Simpkins further testified that Backpage was a main source for prostitution advertisements, and that underage sex trafficking victims were often advertised therein, without specifying whether the females were underage.

On November 17, 2016, Sgt. Simpkins applied for a warrant to search Defendant's cellphone. The warrant requested a broad category of files and information that could reveal facts such as whether and when Backpage was visited, confirmation emails from Backpage, pictures posted, communications with johns, and so forth. He also testified that in his 30 years of experience in TTPD, he had never arrested a pimp in possession of a firearm.

In his motion to suppress, Defendant argues that all physical evidence obtained during the search of the motel room and of his person should be suppressed, as well as the information obtained from the search of his cellphone on the grounds that, *inter alia*, the officers' warrantless entry into the room was not supported by probable cause or exigent circumstances, his seizure and frisk search were not supported by reasonable suspicion, the seizure of his property exceeded the bounds of a lawful *Terry* stop, his arrest was not supported by probable cause, the search of his cellphone was based on an unconstitutionally general search warrant, and that the warrant was stale when executed. Defendant also moves to suppress his statements to the police. Conversely, the Government refutes all of Defendant's arguments and specifically contends that Defendant did not have a reasonable expectation of privacy in the motel room, the officers' entry into the room was justified by probable cause and exigent circumstances (namely, the potential destruction of marijuana evidence and evidence of prostitution), the officers had reasonable suspicion to justify an investigatory stop and frisk of Defendant after he startled them, the evidence recovered from Defendant would have inevitably been discovered due to the outstanding Maryland warrant for his arrest, the discovery of the Maryland arrest warrant constituted an intervening circumstance that cured any arguable violation under the attenuation doctrine, and the search warrant was not unconstitutionally vague

or general given that the search was for evidence related to sex trafficking. As to Defendant's statements to police, the Government indicated at the motion to suppress hearing that the Government would not introduce any such statements and, thus, the argument is moot. Based on the arguments and evidence presented, and the case law relied upon, for the reasons that follow, Defendant's motion to suppress is denied in its entirety.

As to Defendant's contention that the officers' warrantless entry into the motel room violated his reasonable expectation of privacy, "a defendant must have standing to invoke the Fourth Amendment's exclusionary rule." *United States v. Cortez-Dutrieville*, 743 F.3d 881, 883 (3d Cir. 2014). Such standing is demonstrated by establishing "a legitimate expectation of privacy in the invaded place." *Id.* The defendant "bears the burden of proving . . . that he had a legitimate expectation of privacy." *United States v. Donahue*, 764 F.3d 293, 298 (3d Cir. 2014). Although overnight guests in a home or hotel may claim Fourth Amendment protections, one who is "merely present" may not. *Minnesota v. Carter*, 525 U.S. 83, 88-90 (1998); *Minnesota v. Olson*, 495 U.S. 91, 96-99 (1990). In *United States v. Perez*, the United States Court of Appeals for the Third Circuit ("Third Circuit") found that under the standing rule, individuals in another person's apartment for approximately eight hours "for the business purpose of packaging cocaine had no legitimate expectation of privacy in that apartment." 280 F.3d 318, 337 (3d Cir. 2002). The *Perez* court summarized that "we find no evidence that the Appellants were at Del Rosario's apartment for any purpose other than to engage in drug-related activities. They therefore have no reasonable expectation of privacy in Del Rosario's apartment to challenge the items seized therefrom under the Fourth Amendment and their claims are rejected on that basis." *Id.* at 338. Here, Defendant failed to meet his burden of establishing that he was an overnight guest in the motel room with an expectation of privacy. To the contrary, the evidence established that Defendant was not the registered guest in the room; he was outside the room at approximately 2:40 a.m., walking away after a john arrived; he appeared to be hiding in the bathroom at approximately 3:10 a.m., there was no record evidence of any of Defendant's belongings, such as a bag, clothes, or toiletries in the room, with the exception of the room key; and the room was being used for the business of sex trafficking minors. Defendant's possession of a room key is not enough to overcome the facts recited above and establish any right of privacy.

Defendant cites to *United States v. Murray*, 821 F.3d 386, 391 (3d Cir. 2016) (citation omitted), a case in which the defendant moved to suppress evidence obtained from the search of a motel room the defendant had rented for the business of prostitution. There, the Third Circuit stated in *dicta:* "The District Court found, and the parties do not dispute, that [the defendant] had a legitimate expectation of privacy in Room 302." To the extent that *Murray* could be read as holding that the renter of a hotel room has a reasonable expectation of privacy in conducting the business of prostitution in that room, the facts of *Murray* are inapposite as it was that the defendant in *Murray* rented the room, whereas here, it is undisputed that Defendant's brother was the one who rented the room. Considering the holdings in *Murray* and in *Perez,* this Court is not persuaded that Defendant had a legitimate expectation of privacy in the motel room.

Further, this Court finds that, under the "exigent circumstances" exception to the warrant requirement, the officers' entry into the room was constitutionally permissible based on Officer Lis' credible testimony that: he smelled the odor of marijuana coming from the room; Officer Alpaugh told him that after he knocked on the door, someone inside the room walked toward the door and then walked away and turned the light off and on; and, based on his law enforcement knowledge, persons in a hotel room can very easily flush drugs down the toilet when police are outside the room. The officers, therefore, had probable cause to believe that a crime was being committed inside, and exigent circumstances permitted them to enter without a warrant for the purpose of preventing the destruction of evidence of a drug crime. *See Kentucky v. King*, 563 U.S. 452 (2011) (holding that where the police smelled marijuana outside a home, knocked and announced their presence, and heard movement inside, "the need to prevent the destruction of evidence" was an exigent circumstance justifying a warrantless entry).

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

Defendant also argues that the officers lacked reasonable suspicion to search his body after he walked out of the bathroom. Defendant is mistaken. It is well-settled that "a police officer may conduct a brief, investigatory stop of a person when an officer has reasonable suspicion, based on 'specific and articulable facts' and 'rational inferences from those facts,' that criminal activity may be afoot," and that "during an investigatory stop, an officer may conduct a pat-down search for weapons if there is reasonable suspicion to believe that the person is armed and dangerous." *United States v. Frisby*, 474 Fed. Appx. 865, 867 (3d Cir. 2012) (citing *Terry v. Ohio*, 392 U.S. 1, 21-24 (1968). Here, once inside the room, Officer Lis observed a grinder which he recognized is used for drug use. Furthermore, Officer Lis had a reasonable, articulable suspicion that additional criminal activity was afoot gleaned from the information provided by Mr. Nim regarding prostitution, the Backpage ad, and the similarity of the young female who opened the door to the advertisement. Additionally, when Defendant exited the bathroom and startled the officers, Officer Lis had reason to believe Defendant was the pimp of the females. Based upon these facts, the officers were justified in briefly frisking Defendant for weapons to ensure their safety. Thus, this Court finds that the search was constitutionally proper.

In addition, the evidence obtained from Defendant's person inevitably would have been found pursuant to a search incident to his arrest after the officers learned of the outstanding Maryland arrest warrant. *See United States v. Vasquez De Reyes*, 149 F.3d 192, 195 (3d Cir. 1998) (observing that "'if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received.'") (alteration original) (quoting *Nix v. Williams*, 467 U.S. 431, 444 (1984)). Once Officer Lis learned of the outstanding Maryland warrant, there was probable cause to arrest Defendant and search his body. *United States v. Rosario*, 305 Fed. Appx. 882 (3d Cir. 2009); *United States v. Roberts*, 256 Fed. Appx. 493 (3d Cir. 2007). Additionally, as in *Utah v. Strieff*, 136 S. Ct. 2056, 2061-62 (2016), the discovery of the valid, outstanding Maryland arrest warrant is an intervening development that breaks the causal chain between the alleged illegal stop and the subsequent discovery of incriminating evidence.

As to Defendant's challenge to the warrant to search his cellphone, this Court finds that the warrant was not unconstitutionally general, given that the search was for files associated with sex trafficking, which in Sgt. Simpkins' experience, could come in many forms. *See, e.g.*, *United States v. Gorny*, 2014 WL 2860637 (W.D. Pa. June 23, 2014) (rejecting argument that warrant for search of cellphone was unconstitutionally general where phone was used in the drug trade); *see also United States v. Stabile*, 633 F.3d 219, 236-46 (3d Cir. 2011) (discussing warrants for, and searches of, electronic devices). The cases Defendant cites pertaining to search warrants in cases involving child pornography are inapposite, as the kinds of files in those cases are generally much more limited. Finally, the Court concludes that there was no staleness issue that would warrant suppression of the evidence extracted from the cellphone given that probable cause still existed at the time the warrant was executed. *United States v. Bedford*, 519 F.2d 650, 655 (3d. Cir. 1975) (holding that the timeliness of the execution of a warrant "should not be determined by means of a mechanical test with regard to the number of days from issuance, nor whether any cause for delay was per se reasonable or unreasonable. Rather it should be functionally measured in terms of whether probable cause still existed at the time the warrant was executed.").

Accordingly, based on the analysis and reasons discussed, Defendant's motion to suppress is denied.